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P.Q. Appellant/Claimant v. EMPLOYEE PLACEMENT SERVICES Appellee/Employer	Case No.: 2012-DOES-00698

FINAL ORDER

I. INTRODUCTION

A. Parties: P.Q. ("Claimant") and Employee Placement Services ("Employer"). Claimant, a member of the District of Columbia Bar, represented herself at the hearing. Thomas B. Martin, Esq., of TALX represented Employer.

B. Relevant Statutory Provisions: District of Columbia Unemployment Compensation Act ("Act"), D.C. Official Code §§ 51-111(b) (timeliness of appeal) and 51-110 (reasons for disqualification).

C. Issue Presented: Is Claimant disqualified from receiving unemployment benefits because of the reason for Claimant's separation from employment?

D. Date and Time of Evidentiary Hearing: May 14, 2012, at 12:15 p.m.

E. Witnesses: Placement Director R.S. testified for Employer. Employer also called Claimant to testify. Claimant testified on her own behalf.

F. Exhibits Received into Evidence: Employer's Exhibit 200.

G. Result: Claimant left her job voluntarily and did not prove that her leaving arose from good cause connected with the work or any other non-disqualifying reason. The Determination is affirmed. Claimant remains disqualified from receiving benefits.

II. JURISDICTION

The appeal was timely, based on its filing date and the mailing date of the Claims Examiner's Determination.[1] Jurisdiction is established.

III. FINDINGS OF FACT

Employer operates a business that places lawyers in temporary assignments. Claimant worked for Employer and was assigned to work at a local law firm. She began the assignment on December 7, 2011.

Claimant has been diagnosed with depression and anxiety disorder. On January 24, 2012, after deciding that the stress of her job and the work environment were exacerbating her depression and anxiety, she quit. Exhibit 200. That evening, she sent the following email to Employer:

> I need to take time off from working per doctor's orders and since I cannot give a definite return, I think it is best that I withdraw from the assignment. I apologize for not giving prior notice, but this is really necessary for me.
>
> Thank you and best wishes for your agency.

Exhibit 200.

Claimant's supervisor, Placement Director R.S., assumed correctly when he read the email that Claimant was quitting her job.

Before quitting her job, Claimant had not provided Employer medical documentation or otherwise communicated to Employer the nature of her condition, the concerns she had about the work and its effect on her health, or her need for time off.

[1] D.C. Official Code § 51-111(b); OAH Rules 2812.3 and 2983.1.

IV. DISCUSSION AND CONCLUSIONS OF LAW

An unemployed individual who meets certain statutory eligibility requirements is generally qualified to receive unemployment benefits. D.C. Official Code § 51-109. There are several exceptions. D.C. Official Code § 51-110. For example, if an employee voluntarily leaves his or her most recent work without good cause connected with the work, the employee is disqualified from receiving benefits. D.C. Official Code § 51-110(a), 7 District of Columbia Municipal Regulations ("DCMR") 311.

An employee's leaving work is presumed to be involuntary. 7 DCMR 311.3; *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 757-58 (D.C. 2008). The presumption is overcome if the employee "acknowledges that the leaving was voluntary or the employer presents evidence sufficient to support a finding . . . that the leaving was voluntary." 7 DCMR 311.3; *see Coal. for the Homeless v. D.C. Dep't of Emp't Servs*., 653 A.2d 374, 376 (D.C. 1995). A leaving is "voluntary" if it is "voluntary in fact, within the ordinary meaning of the word 'voluntary.'" 7 DCMR 311.2; *see Cruz v. D.C. Dep't of Emp't Servs*., 633 A.2d 66, 70 (D.C. 1993) (quoting 7 DCMR 311.2).

Once an employee seeking unemployment benefits acknowledges, or an employer establishes, that a leaving was voluntary, then the employee bears the burden of proving that the voluntary leaving arose from "good cause connected with the work." 7 DCMR 311.4; *Branson v. D.C. Dep't of Emp't Servs.*, 801 A.2d 975, 978 (D.C. 2002).

There is no dispute in this case about the reason for Claimant's separation from employment on January 24, 2012: Claimant testified that she quit because she believed the stress of her job and the unpleasantness of the work environment were exacerbating her pre-existing depression and anxiety. I credit that undisputed testimony as well as Claimant's undisputed testimony that her doctor ultimately agreed she should take time off. Nothing in the record suggests Employer wished Claimant to resign or compelled Claimant to resign. I therefore conclude that Claimant's separation from employment was "voluntary," as that term is defined under the Act. *See Branson*, 801 A.2d at 978 (holding that a resignation for alleged health reasons is a voluntary resignation under the Act).

Because Claimant left her position with Employer voluntarily, she will be disqualified from receiving unemployment benefits unless she shows that her reason for leaving constitutes "good cause connected with the work" or is otherwise an exception to the disqualification provisions of D.C. Official Code § 51-110. Applicable regulations express the "good cause" standard as a question: "'[W]hat would a reasonable and prudent person in the labor market do in the same circumstances?'" 7 DCMR 311.5. DOES regulations also provide examples of reasons that are considered "good cause" for an employee's voluntary decision to quit a job:

> (a) Racial discrimination or harassment;
>
> (b) Sexual discrimination or harassment;
>
> (c) Failure to provide remuneration for employee services;
>
> (d) Working in unsafe locations or under unsafe conditions;
>
> *(e) Illness or disability caused or aggravated by the work; Provided, that the claimant has previously supplied the employer with a medical statement; and*
>
> (f) Transportation problems arising from the relocation of the employer, a change in the primary work site, or transfer of the employee to a different work site; Provided, that adequate, economical, and reasonably distanced transportation facilities are not available.

7 DCMR 311.7 (emphasis added). The District of Columbia Court of Appeals has noted that this list is "nonexclusive" and that the critical inquiry remains how a "reasonable and prudent person in the job market" would respond to the situation. *Gunty v. D.C. Dep't of Emp't Servs.*, 524 A.2d 1192, 1199 (D.C. 1987).

At the hearing, Claimant testified that she quit because she decided that her depression and anxiety were being exacerbated by the stress of her job and her unpleasant work environment. She acknowledged, however, that she neither provided medical documentation to Employer before quitting nor expressed her concerns about the job to her supervisors. Indeed, there is no substantial or reliable evidence in the record that Employer was aware, prior to January 24, 2012, that Claimant had any medical condition at all that might in any way interfere with her performance or cause her difficulty.

Claimant's failure to give Employer a medical statement before she quit means that her resignation for medical reasons cannot be considered "good cause connected with the work"

under the District of Columbia Unemployment Compensation Act. Applicable regulations identify "illness or disability caused or aggravated by the work" as an example of something that may be good cause for leaving connected with the work, but only where "claimant has previously supplied the employer with a medical statement . . . ." 7 DCMR 311.7(e). The Court of Appeals has held that although a medical statement with limited information may put an employer on notice of the need for further inquiry, *some sort of prior medical documentation* must be submitted to Employer before the resignation. *See Bublis v. D.C. Dep't of Emp't Servs*., 575 A.2d 301, 303-304 (D.C. 1990) (asserting that the purpose of the medical statement requirement is "to give the employer . . . 'objective, professional verification' of the disabling illness and to permit the employer to take steps, if any, to accommodate the employee and avoid a job-necessitated resignation"); *Chimes D.C., Inc. v. King*, 966 A.2d 865, 870 (D.C. 2009) ("Even assuming [the claimant] orally notified her supervisor that her work was causing . . . or aggravating her [medical] condition, such oral notification would not suffice to meet the medical statement requirement as it was not 'a physician's statement or equivalent documentation.'"). Claimant's failure to alert Employer to her medical condition prior to her resignation deprived Employer of any opportunity to try to accommodate Claimant's concerns and limitations, to the extent any existed.[2]

[2] As to the possibility of accommodation, it is noteworthy that Claimant testified about specific aspects of her job that she felt were triggering health problems. These included the stress of a fast-paced document review and the fact that her coworkers seemed uncollegial. Neither of these complaints is, on its face, something that would be impossible for Employer to address. I cannot tell from the record whether Employer would have tried to address the concerns or whether the resolution of those concerns would have proved a sufficient accommodation of Claimant's medical condition. Nevertheless, nothing in the record suggests it would have been futile for Claimant to provide medical documentation to Employer before leaving work on January 24, 2012. Presumably that is what a "reasonable and prudent person in the job market" would have done under the circumstances.

Because Claimant in this case gave Employer no medical statement prior to her resignation, her resignation was not for "good cause connected with the work" as that term is defined under the Act.[3]

The Claims Examiner's Determination is affirmed. D.C. Official Code § 51-111(e). Claimant remains disqualified from receiving benefits. D.C. Official Code § 51-110(a).

V. ORDER

Based upon the foregoing and the record in this matter, it is:

ORDERED, that the Claims Examiner's Determination is **AFFIRMED;** it is further

ORDERED, that Claimant is **DISQUALIFIED** from receiving unemployment compensation benefits; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

DATED: May 15, 2012

_____
Steven M. Wellner
Administrative Law Judge

[3] Claimant testified that DOES's Unemployment Handbook does not explain the consequences of quitting for medical reasons without providing prior medical documentation. Although I understand Claimant's frustration with applicable regulations, she did not actually testify that she resigned on January 24, 2012, in reliance on misinformation she received from a DOES official or the Unemployment Handbook. Moreover, I am unaware of any statute or case law that would allow me to find a claimant qualified for benefits because of her reliance on a misstatement of 7 DCMR 311 by DOES, although I need not resolve that question in this case.